

STATEMENT OF REP. JOHN CONYERS, JR.

Future of Music Coalition Policy Summit

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This is a very timely conference because the music industry stands at a crossroads. As much as any aspect of our society, the Internet is dramatically changing the way music is produced, marketed, and distributed.

If we make the correct public policy choices, we will be able to achieve a true musical renaissance. Used properly, the Internet can constitute a whole new vehicle for creative expression and the delivery of content. An artist can market his or her work to millions of people with a keystroke. This will reduce costs and allow more types of music to reach consumers.

On the other hand, if we make the wrong decisions, we will stifle creative incentives and limit consumer choice. It also could mean that an elite few will control distribution on the Internet.

The decisions we make will have repercussions far beyond the music world. The ability to fairly and effectively distribute digital music will operate as a test case for our ability to distribute movies, books, software, and all other forms of content electronically. If we get this right, the information age truly will usher in a period of innovation, prosperity, and enhanced consumer welfare.

Of course the question we face in this conference is how we can go about making the right choices. For me, the answer lies in carefully considered and evenly enforced antitrust and copyright laws – both of which happen to fall within the jurisdiction of the Judiciary Committee.

In terms of antitrust, the law needs to guard against undue concentration of power at any level of the music distribution chain. We also

need to make sure that companies with market power in one line of business do not unfairly leverage that power into other areas.

With regard to copyright, we must ensure that there are appropriate incentives for creative works of music without interfering with legitimate user rights. Balancing these interests will not be easy, but it is imperative if the music industry is going to grow and prosper.

### Problematic Proposals

Not surprisingly, there is no shortage of policy proposals which would impact digital music. Also not surprising is the fact that many of these proposals are being pushed by interests who do not always have the consumers best interests in mind. As a matter of fact, in my judgment, many of the initiatives currently on the table will do far more harm than good.

1. **Let me start by stating that I have long been skeptical of compulsory licenses**, where government mandates that the copyright owner license his or her work for a statutory fee. While such licenses ensure that the copyrighted works will be made available, I believe they would have the unintended consequence of discouraging the creation of musical works in the first place. A creator may not go to the effort of writing and recording a song if they can't control their own copyright. In the end, by limiting copyright, we risk killing the goose that lays the golden egg that drives the music business.

I know that some believe compulsory licenses are needed to counter the fact that the big record companies are forming joint ventures to distribute their own music on the web, and there is a concern they may not make their copyrights available to competitors. But I believe we need to see how these joint ventures operate in practice before we resort to the radical remedy of a compulsory license.

2. **Let me next turn to the so-called Tauzin-Dingell bill.** The Bell Telephone Companies believe that we can enhance and encourage the distribution of digital music if we eliminate the competitive safeguards included in the 1996 Telecommunications law. They claim this will lead to more and cheaper broadband. They are only half right. A bigger pipeline is essential for ease and speed of digital music transmission. The problem is, if we unshackle the Bells, we will decimate competition in the telephone market – which is already more than 90% controlled by the Bells – and permit them to extend their monopoly power into broadband as well. If we want more broadband – and more digital music – the key is more competition, not less.
3. **Our friends at Microsoft have their own ideas about digital music.** They believe that by bundling music software into their monopoly operating system, it will result in far greater ease of use. Again, I believe this is a false promise. In the short run it may seem convenient to have all of your software bundled together. But history has proven that, in the long run, less competitors means less innovation. This is why it is so important that the district court reconsider the weak consent decree negotiated by the Justice Department to prohibit Microsoft from unfairly leveraging their monopoly power.

### Possible Useful Legislation

One area that I do believe warrants legislative attention is the unequal bargaining power between artists and distribution companies. It is an unfortunate fact of life that the entertainment industry has a history in which artists have sometimes been relegated to near servitude status.

1. Fortunately, several important steps have recently been taken to protect artists' rights. In 1995, I helped write the Digital Performance Rights Act, which, for the first time, granted artists the rights to be paid for digital performances. **Just last November, SoundExchange**

**reached an agreement with the recording industry and the artists so that these royalties could be paid directly to the artists. This is a huge step in the right direction**, and now the question is whether the arrangement will work in practice and whether any aspect warrants codification.

As a related matter, I'd like to point out that one group of creators – the songwriters – has benefitted largely because the royalties are paid directly to them through various licensing organizations. For example, it would be impossible for songwriters to monitor every radio, television, or radio broadcast to hear when their songs come up; instead, they are able to rely on performance rights organizations that administer the licenses for them and pay them their royalties. This is a model that has been working extremely well.

2. **Another area that I am paying close attention to is State Senator Kevin Murray's efforts to repeal the California law permitting recording artists to be bound to contracts in excess of seven years.** If this is successful, we need to consider whether it will merely cause the industry to enter into contracts outside of California. The last thing we want is a race to the bottom legislatively, where the state with the weakest protections becomes the jurisdiction of choice.
3. **Finally, I believe legislation may be needed to permit freelance artists – usually writers – to come together to form collective bargaining units without facing antitrust liability.** Like songwriters, these authors often are forced to enter into contracts of adhesion that do not serve the public interest.

## Conclusion

*If America is going to remain the leading force for creativity and innovation in the world, it will require that every party with a vested interest in the future of music act decisively and responsibly.*

For the recording industry, that means treating artists with the economic dignity they deserve. For the creators, it means recognizing that their copyright can and should be subject to reasonable First Amendment and fair use rights.

For the Administration, it means our copyright laws must be fairly and evenly enforced. It also means recognizing that the antitrust laws do have a role in the digital world, and that bigger does not always mean better. For consumers it means that on the Internet, you get what you pay for. Continued insistence on unlimited access copyrighted works without any payment will simply force quality content off the web completely.

For Congress, it means we must be able to stand up to the special interests, and resist the urge to legislate first and ask questions later. If there is any constant in the digital age, it is change. A law passed today may be superceded by a technological innovation tomorrow.

Although we stand at a policy crossroads, I believe the path for digital music is clear. We need to apply our copyright laws to protect creative incentives for our artists. And we need to enforce the antitrust laws to safeguard against undue economic concentration. If we can accomplish these goals, music – as well as digital transmission of other forms of content – will flourish in the 21st Century.

Thank you and I am happy to take any questions you have, time permitting.